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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/039,481
Filing Date: January 08, 2002
Appellant(s): ALMOG, YAACOV

William H. Dippert
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 29 April 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Appellant states there are no related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct with the following modification. The obviouness-type double patenting rejection has been overcome based on appellant's filing of a terminal disclaimer over US Patent 6,337,168. Claim 45 is removed from the prior art rejections based upon applicants' remarks.

(7) Grouping of Claims

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because in the grouping appellant has not identified why the claims of one group would be patentable if the art renders one or more of the other groups unpatentable.

Appellant simply identifies the differences in claim limitations, which is not sufficient per MPEP 1206, to support separate groupings upon Appeal.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

US 3325409	Whitbread	6-1967
US 3078231	Metcalf	2-1963
US 3438904	Wagner	4-1969
EP 176630	Uytterhoeven	4-1986

Diamond, Arthur S, Handbook of Imaging Material. New York: Marcel-Dekker, Inc. (1991) p. 233.

Schaffert, R. M. Electrophotography. New York: John Wiley & Sons. (1975) pp. 69-73.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 32-46 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 32 states that the method of producing the liquid toner requires that the toners have a given particle conductivity and that the coating of the polymer particles with the at least

one ionomer provides the polymer particles with a chargeability sufficient to give said toner particles said given particle conductivity. The scope of this limitation is not seen as having basis in the specification as filed.

The specification discloses coating unchargeable particles with an ionomer so that the particles obtain the requisite chargeability (spec. p. 6, l. 32-37). The specification also discloses particles that are weakly chargeable but that the charge "would be of little or no utility so far as practical applications in electrostatic imaging were concerned". Enhanced chargeability is obtained by this process (spec. p. 6, l. 38 - p. 7, l. 8). In another embodiment, the ionomer is used to reverse the polarity of the obtained when the particles are present with a charge director (spec. p. 7, l. 9-23).

The instant claim includes within its scope the situation where toner particles that do have sufficient charge in practical applications in electrostatic imaging may either have their charge further increased, kept the same, or decreased by coating with the ionomer to meet the given particle conductivity required. While enhancing of a weakly charged or uncharged polymer particle or reversing the charge on such a particle are disclosed by the reference, enhancement of the charge on a polymer particle that does have utility in electrostatic imaging or decreasing of the charge a polymer particle are not disclosed in the specification. These alternatives are seen as included within the scope of the instant claims. The claim is not seen as having basis in the specification as filed and is new matter. The claims dependent on claim 32 are also rejected because they do not rectify the issues presented above.

Claim 33 does not have basis in the specification as filed for similar reasons. Claim 33 states that the toner precursor particles (understood to be pigmented polymer particles) are unchargeable or weakly chargeable by the charge director(s) to an extent that they are not useable in electrostatic latent images in a particular process. This claim would appear to

include the situation where the particles would have sufficient charge for some electrostatic imaging applications but not for others. As discussed above, the specification is clear that the polymer particles "would be of little or no utility so far as practical applications in electrostatic imaging were concerned" because they have weak or no charge. This is consistent with applicant's remarks at page 4, lines 7-8, of the response of 17 December 2002. The specification does not provide basis for an invention where the particles are effective in some imaging applications but not in others. The claim includes within its scope certain features, discussed here, that are new matter and without basis in the specification as filed. The claims dependent on claim 33 are also rejected because they do not rectify the issues presented above.

Claim 46 is similarly without basis in the specification as filed because it does not state the initial charge condition on the pigmented polymer particles. As noted above, the specification discloses coating unchargeable or weakly chargeable particles with an ionomer so that the particles obtain the requisite chargeability, or to reverse the polarity of the polymer particles. The claims include those other embodiments, noted above, that are outside the scope of the claims.

Claim Rejections - 35 USC § 103

Claims 32-44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPA 176 630 in view of Whitbread in US Patent 3,325,409, all further in view of Handbook of Imaging Materials to Diamond, p. 233, Metcalfe in US Patent 3,078,231, and Wagner in US Patent 3,438,904.

The European document discloses a liquid toner and method of making and using the toner. The liquid toner comprises a pigment coated with an ionomer resin (an anionic addition

polymer) such as Copolymer D. The acid groups of the ionomer may be those discussed on page 7 (see dependent claims 36-40). The ionomer enhances the chargeablity of the pigment particles by giving stability to the toner charge (EP pp. 1-2). The coated pigment is dispersed in a carrier liquid. See Examples. The EP reference prepares the liquid toner by either precoating the pigment particles with the ionomer or dispersing the pigment into the non-polar carrier liquid and then adding the ionomer which appears to adsorb onto the pigment (p. 13; Examples). Because the ionomer remains on the pigment particle it appears to be insoluble in the carrier liquid at room temperature. The liquid developers are used in conventional developing processes of charging, imaging, developing, and transferring.

The reference does not disclose a pigmented polymer and does not disclose a charge director in the process of making the liquid toner.

Whitbread discloses a pigment used in a liquid toner, which comprises a mixture of a hydrogenated rosin and carbon black or phthalocyanine blue. This pigment is dispersable in the carrier liquid (cols. 1-2). Because the pigmented polymer is used as a toner it appears to be chargeable to a first extent. Whitbread discloses the hydrogenated rosin/pigment mixture as providing high contrast images, which are scuff resistant when dried (col. 1, l. 37-42).

Metcalfe discloses that pigment particles do not necessarily have the necessary and required charge for a desired development process and thus charge control agents (i.e., compounds which adjust the charge of the pigment in the carrier liquid) are coated onto the pigment to give the requisite charge (col. 1, l. 51-54; col. 1, l. 62-col. 2, l. 20).

Diamond discloses charge directors as commonly employed in the art to impart the desired charge to the liquid developer (p. 233).

Wagner teaches that pigment coatings differ the charge polarity of the pigment because these components change the surface charging characteristics of the pigment (see Wagner col. 5, l. 37-42).

Independent claim 32 does not require any specific charge level for the pigmented particle while independent claim 33 defines the charge based on any particular process of image formation (i.e., "at least one ionomer component in an amount effective to impart enhanced chargeability to the pigmented polymer to an extent that the coated particles can be used to develop a latent electrostatic image in the particular process for electrostatic development of electrostatic images"). This includes situations where the charge is different from that inherently possessed by Whitbread's pigmented particle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the pigment of Whitbread as the pigment in the European document because Whitbread discloses the hydrogenated rosin/pigment mixture as providing high contrast images, which are scuff resistant when dried. The artisan would recognize that the resin coating in the European document is applied to the pigment to impart the desired charge to a pigment particle (paragraph spanning pp. 1-2; note a similar principle in Metcalfe) and thus the artisan would reasonably conclude that the charge on the pigment particle of Whitbread could be controlled by the ionomer resin coating of the European document. Thus the artisan would obtain by the combination high contrast images, which are scuff resistant while obtaining the charge characteristics of the European document. It would also have been obvious to add a charge director to the liquid developer because Diamond discloses charge directors as well known components to produce the desired charge on the toner. The addition of the ionomer resin to the pigment in the European document (EP p. 13) would have been expected to differ the charge polarity of the pigment because these components would change

the surface charging characteristics of the pigment (see Wagner col. 5, l. 37-42). It would also have been obvious to heat the ionomer during the coating when the ionomer becomes adsorbed because this would enhance the ability of the ionomer to come in contact with the pigment particles and then cooling would also have been obvious in order to retain the ionomer on the pigment particle (see dependent claim 34). The artisan would have been expected to optimize the amount of ionomer coating given the guidance on EP p. 8, which suggests from 2 to 50 weight percent of the ionomer, particularly at the specified lower limit (see dependent claims 41-43). The applied references are all concerned with the development of electrostatic latent images. Thus the artisan would produce the toner to have develop the images be providing the toner materials with suitability chargeability.

The Examiner notes that Whitbread combines rosin and pigment to produce scuff resistant images when dried (col. 2, l. 21-25). The artisan seeking to obtain this advantage while controlling the charging to a specific degree such as taught by the EP reference would have ample motivation to combine the references to obtain the combination of scuff resistance and controlled chargeability by the references. The art clearly indicates that the artisan would know that toner particles can be coated to obtain the desired charge for a specific application. Metcalfe teaches that pigment particles do not necessarily have the necessary and required charge for a desired development process and thus charge control agents (i.e., compounds which adjust the charge of the pigment in the carrier liquid) are coated onto the pigment to give the requisite charge. The body of art is such that the artisan would recognize that the pigmented particles are known to provide certain advantages (e.g., Whitbread's high contrast, scuff resistant images). The artisan would also recognize that the art teaches that coating the particle with an ionomer, as in the EP reference, can modify the charge of toner particles.

Claims 30-44 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPA 176 630 in view of *Electrophotography* to Schaffert, pp. 69-73, all further in view of Handbook of Imaging Materials to Diamond, p. 233, Metcalfe in US Patent 3,078,231, and Wagner in US Patent 3,438,904.

The European document discloses a liquid toner and method of making and using the toner. The liquid toner comprises a pigment coated with an ionomer resin (an anionic addition polymer) such as Copolymer D. The acid groups of the ionomer may be those discussed on page 7. The ionomer enhances the chargeablity of the pigment particles by giving stability to the toner charge (EP pp. 1-2). The coated pigment is dispersed in a carrier liquid. See Examples. The EP reference prepares the liquid toner by either precoating the pigment particles with the ionomer or dispersing the pigment into the non-polar carrier liquid and then adding the ionomer which appear to adsorb onto the pigment (p. 13; Examples). Because the ionomer remains on the pigment particle it appears to be insoluble in the carrier liquid at room temperature. The liquid developers are used in conventional developing processes of charging, imaging, developing, and transferring.

The reference does not disclose a pigmented polymer and does not disclose a charge director in the process of making the liquid toner.

Schaffert provides disclosure and motivation for the use of pigmented polymer particles in the invention of the EP document. Specifically, Schaffert discusses liquid developers beginning on page 70 and states that dispersions of pigment particles in a carrier liquid are used as liquid developers. The reference states that it is known to mill the pigment with a resin or oil binders to provide fine suspensions from which images of very fine grain can be obtained. The reference further states the advantage of the binder-pigment milling as providing bonding of the pigment to development paper (i.e., adhesion). The resultant particle of milling would be a

pigmented particle because the binder resin is present with the pigment in the resultant particle. Schaffert also shows in Table 4 (p. 73) that known pigments and dyes for fusible toners have weak positive and weak negative charges and that synthetic polymeric binders for fusible toner particles may have no charging effect at all. This suggests that the combination of pigment and resin can be chosen to give a weakly charged particle.

Metcalfe discloses that pigment particles do not necessarily have the necessary and required charge for a desired development process and thus charge control agents (i.e., compounds which adjust the charge of the pigment in the carrier liquid) are coated onto the pigment to give the requisite charge (col. 1, l. 51-54; col. 1, l. 62-col. 2, l. 20).

Diamond discloses charge directors as commonly employed in the art to impart the desired charge to the liquid developer (p. 233).

Wagner teaches that pigment coatings differ the charge polarity of the pigment because these components change the surface charging characteristics of the pigment (see Wagner col. 5, l. 37-42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a pigmented polymer particle as taught by Schaffert for the pigment in the EP reference because Schaffert teaches that these particles, formed by milling the pigment and binder, are effective for forming fine dispersions. The artisan would recognize that fine dispersions of the pigmented particle would increase the detail of the developed image. Further, the presence of the resin in the pigmented particle would aid in bonding of the pigment to the final receiver. It would also have been obvious to add a charge director to the liquid developer of the EP document because Diamond discloses charge directors as well known components to produce the desired charge on the toner. The addition of the ionomer resin to the pigment in the European document (EP p. 13) would have been expected to change the

charge polarity of the pigment because these components would change the surface charging characteristics of the pigment (see Wagner col. 5, l. 37-42). It would also have been obvious to heat the ionomer during coating when the ionomer becomes adsorbed because this would enhance the ability of the ionomer to come in contact with the pigment particles and then cooling would also have been obvious in order to retain the ionomer on the pigment particle and use the developer at room temperature.

The artisan would have been expected to optimize the amount of ionomer coating given the guidance on EP p. 8, which suggests from 2 to 50 weight percent of the ionomer, particularly at the specified lower limit. The applied references are all concerned with the development of electrostatic latent images. Thus the artisan would produce the toner to have develop the images be providing the toner materials with suitability chargeability.

(11) Response to Argument

Appellant traverses the rejection under section 112 for independent claims 32 and 46 and those dependent (Argument A; Brief pp. 5-6) that "the invention is concerned with taking toner particles that are somewhat chargeable and increasing their chargeability so that they are usable in a particular process. Whether these particles could be used in some other, perhaps theoretical, process is clearly not relevant to the utility as defined by the examples, as this utility would be clear to a person of ordinary skill in the art." Appellant also notes that "uncoated toner particles can, for example, initially have such a low chargeability that the particles are completely unusable in any electrostatic processes, it would be clear to a person of ordinary skill in the art that if the toner particles in the examples had higher levels of chargeability initially, the coated toner particles would have had correspondingly the higher levels of chargeability conferred by the coating. Thus, a person of ordinary skill in the art would understand that the

application teaches enhancement of the type claimed in claims 32 and 46, where the particles are to be matched to the requirements of a particular process." Applicants finally note that "the Examiner[,] in the final rejection indicated that the claims might cover increases in charge, having the same charge and decreasing the charge. A simple reading of the claims shows that only an increase in the charge is defined, since claims 32 and 46 define the coating as providing a sufficient chargeability, indicating that it did not have same without the coating."

This last argument by appellant perhaps best illustrates the Examiner's position and the underlying basis and propriety of the rejection. The claims include within their scopes inventions that are clearly outside the scope of the disclosure. The claims do not state explicitly or implicitly "only an increase in charge" as asserted in the response. Claim 32 states that the ionomer coating "provides to said particles a chargability sufficient to give said toner particles said given particle conductivity." This conductivity is defined earlier in the claim as only a "given conductivity". There is no statement in the claim that the conductivity is greater. Claim 46 similarly states, "wherein said coating provides to said polymer particles a chargeability sufficient to impart said toner particles particle conductivity to the extent that said particles can be used to develop a latent electrostatic image in the electrostatic imaging method." There is no statement in these claims that the conductivity is "increased" as asserted in the Brief. The claims only require a "given particle conductivity" or a conductivity "particles can be used to develop a latent electrostatic image in the electrostatic imaging method". The claims clearly include within their scope those situations where the chargeability is the same or even less than that of the original particles if this gives the given conductivity desired. These embodiments are clearly not described by the specification.

It is apparent that appellant is attempting to limit the claims by limitations not present therein by reference to the description in the specification, particularly the examples. This is

improper because the claims are fully understandable in and of themselves giving the claims their broadest and reasonable interpretation. There is no need for the artisan to look to the specification for limitations on the claim language, and, in fact, this is improper. The specification does not impart any specific or special meaning to any term or phrase in the claims, which could provoke the claim reader to look to the specification for such a special meaning. As noted in MPEP 2106, "While it is appropriate to use the specification to determine what applicant intends a term to mean, a positive limitation from the specification cannot be read into a claim that does not impose that limitation." The specification does not impose a positive limitation to any of the claims and, consequently, the claims stand by themselves for determination of their scope.

Giving the claims their broadest reasonable interpretation, they include subject matter outside the scope of the specification's description of the invention, which is not in accordance with section 112, first paragraph.

With respect to the appellant's arguments (Argument B) over section 112, first paragraph, for claim 33 and those claims dependent, appellant takes the position the toner precursor material is unchargeable or weakly chargeable by a charge director to an extent that it is not useable in electrostatic development of latent images for a particular process and based on this claim limitation the artisan would understand that the particles do not have sufficient charge. Appellant also relies on the specification and Figures, as was done for the argument for claims 32 and 46 above (Argument A).

In response, the Examiner notes that claim 33 includes the situation where the toner precursor particles have sufficient charge for some electrostatic imaging applications but not for others. The key limitation that appellant relies upon is the "particular process" that the

chargeability is tied to. The claims do not define the "particular process" and it, consequently, includes processes that require significantly small amounts to significantly large amounts of charge. Specification page 5, lines 1-3, states, the polymer particles have a coating of at least one ionomer component in an amount effective to impart enhanced chargeability to the ordinarily unchargeable or weakly chargeable particles. Specification page 7 further describes the uncoated particles chargeability as ,"although the skilled person would be aware that a weak charge could be imparted to the particles it would be apparent that this property would be of little or no utility so far as practical applications in electrostatic imaging were concerned." These passages describe the chargeability for any and all electrostatic imaging applications, not just an undefined "particular process". In other words, the particles are unchargeable or weakly chargeable for all applications not just a particular process; that is, one process, which would require substantially larger chargeability.

The claims are not described by the specification as filed and are properly rejectable under section 112.

At the beginning of their remarks concerning the art rejections appellant summarizes various references (the EP reference, Whitbread, and Schaffert) applied in the art rejections. Deficient in each of these descriptions is treatment of the art as a whole, particularly as applied in the instant rejections. Appellant cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Appellant states that none of the references teach about taking a pigmented particle and coating it with a different material to adjust chargeability. Each reference according to appellant teaches methods of making fully functional toner particles that have desired

properties. Consequently, there is no reason to combine the references expect when using hindsight reconstruction.

These points will be discussed in detail in the arguments that follow, but it is important to note that there is no requirement that a reference identify deficiencies in its invention or be deficient in order to modify it by another reference's teachings. Patent documents typically describe fully functional inventions for their particular needs, yet the body of case law establishes that a fully functional reference can be modified by the teachings of another fully functional reference to obtain certain benefits, modifications, or other features. The rejections rely upon the full disclosure of the cited references and provide motivation from the supporting references to modify the primary EP reference. Such an approach is consistent with Office guidance and case law.

Appellant also takes issue with the Examiner's identification of the pigmented polymer in Whitbread as a pigment (Brief p. 9, top). Appellant states that this is a toner and not a pigment. Appellant acknowledges that toner particles of Whitbread "might actually result in toner particles that comprise pigment dispersed in polymer particles", but states that there is no teaching of producing a pigment and no characterization of the toner as anything other than a toner. This argument, first presented in the Brief, is not persuasive because Whitbread discloses Microlith black CT and Microlith blue 4GT as pigments (col. 2, l. 1-6). These materials are a combination of a colorant (carbon black or phthalocyanine blue) and rosin (a polymer). Clearly the art recognizes that the combination of a colorant and polymer together is a pigment. The combination of these materials together and the addition of other resin makes a toner but the artisan would still recognize this material as a pigment because it is a colored particulate.

With respect to the specific traversal of the art rejections in Argument C, appellant argues that the cited EP reference never coats anything other than a pigment with the ionomer. There is no reason according to appellant to coat the finished toner of Whitbread with anything, particularly not the ionomer of the EP publication. As discussed above, the references disclose fully functional toners and there is no reason to modify them. Appellant also traverses the rejection because the Examiner has combined five documents to arrive at the claimed invention.

In response the Examiner notes that Whitbread combines rosin and pigment to produce scuff resistant images when dried (col. 2, l. 21-25). The artisan seeking to obtain this advantage while controlling the charging to a specific degree such as taught by the EP reference would have ample motivation to combine the references to obtain the combination of scuff resistance and controlled chargeability by the references. The art clearly indicates that the artisan would know that toner particles can be coated to obtain the desired charge for a specific application. Metcalfe teaches that pigment particles do not necessarily have the necessary and required charge for a desired development process and thus charge control agents (i.e., compounds which adjust the charge of the pigment in the carrier liquid) are coated onto the pigment to give the requisite charge. The body of art is such that the artisan would recognize that the pigmented particles are known to provide certain advantages (e.g., Whitbread's high contrast, scuff resistant images). The artisan would also recognize that the art teaches that coating the particle with an ionomer, as in the EP reference, can modify the charge of toner particles. The EP reference pigment would not be expected to have the scuff resistance taught by Whitbread because this is a result of the combination of the specific rosin and pigment. Although the EP reference does produce a workable liquid toner by itself, the artisan would clearly recognize that improvements could be made to the EP liquid toner's final image by use of Whitbread's pigmented polymer particle. The EP reference in combination with the other art suggests each

of the claimed process steps and appellant is not understood to have argued otherwise. Appellant does, however, disagree with the motivation to combine the references.

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). The art as a whole properly teaches each and every feature of the claimed process

With respect to appellant's Argument D (Brief pp. 9-10), Schaffert provides explicit motivation to use a pigmented polymer particle in the invention of the EP document as the pigment. Schaffert teaches that milling pigment with a resin or oil binders provides fine suspensions from which images of very fine grain can be obtained. The reference further states the advantage of the binder-pigment milling as providing bonding of the pigment to development paper. Schaffert also identifies known pigments as having various charging effects and various fusible polymeric binders as having no charging effect. The artisan has ample motivation to combine the references as proposed in the rejection because the artisan would expect fine, fusible images to be obtained by the pigmented particle of Schaffert and would recognize that weak charging indicated for various pigments and binders would not be a hindrance because of the ionomer coating of the EP document. The rejection is proper because the art as a whole discloses each and every feature of the claimed processes.

Appellant argues that the ionomer of the EP document is not disclosed as being insoluble at room temperature (Argument E; Brief p. 11). The Examiner cannot agree with this position because if the ionomer were soluble it would dissolve from the surface of the toner

particle, which would destroy the effectiveness of the reference's toner. The reference also teaches that the monomers that produce the ionomer are non-solvatable (p. 7, bottom to p. 8, top).

Appellant states that the EP reference does not disclose heating the ionomer to dissolve it and then coat it to coat the toner particle (Argument F). Although the reference does not specify heating and cooling, the reference does teach coating of the toner core (i.e., pigment) with ionomer in a liquid medium. In the rejection above the Examiner states that it would have been obvious to heat the ionomer during coating when the ionomer becomes adsorbed because this would enhance the ability of the ionomer to come in contact with the pigment particles and then cooling would also have been obvious in order to retain the ionomer on the pigment particle and use the developer at room temperature. Appellant has not specifically stated why this rational for making the EP toner is in error, particularly in view of the reference's coating process disclosed.

With respect to each of Arguments G, H, and I, the EP reference teaches carboxylic acid based ionomers neutralized with metal salts to form ionic clusters when, on EP page 7, X is -COO and this acid group is neutralized by the metal ion coordinating compounds disclosed. The EP reference also teaches, methacrylic acid based ionomers when X is the same group noted above, n is zero, and R^1 is methyl. Ethylene (sic "ethelene" in claim 40) acid based ionomers are disclosed when n is 1 and Z is an alkylene group.

For Arguments J and K, the EP reference suggests a weight percent for the ionomer with respect to the coloring matter of 2 to 50 (p. 8, bottom). Such values would clearly suggest

values within the scope of the instant claims, such as at the lower disclosed limit of 2 weight percent.

For Argument L, the Examiner is in agreement with appellant. Claim 45 is no longer subject to an art rejection.

The issues with respect to the section 120 priority claim will be addressed in a separate communication.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

CHRISTOPHER RODEE
PRIMARY EXAMINER

cdr
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